

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALCOLM OWEN REED,

Defendant-Appellant.

UNPUBLISHED

June 2, 2009

No. 283218

Oakland Circuit Court

LC No. 2007-213799-FH

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions of possession with intent to deliver 450 grams or more but less than 1000 grams of cocaine, MCL 333.7401(2)(a)(ii), possession of marijuana, MCL 333.7403(2)(d), and possession of ecstasy, MCL 333.7403(2)(b)(i). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred when it gave jury instructions on the charged crime of possession with intent to deliver cocaine. Defendant maintains that the trial court's failure to instruct the jury that this crime requires a specific intent constituted plain error that affected the outcome of his trial. We disagree.

"A defendant may not waive objection to an issue before the trial court and then raise it as an error on appeal." *People v Fetterly*, 229 Mich App 511, 420; 583 NW2d 199 (1998). "Waiver is the intentional relinquishment or abandonment of a known right. It differs from forfeiture, which . . . [is] the failure to make the timely assertion of a right. One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error. Mere forfeiture, on the other hand, does not extinguish an 'error.'" *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (internal citations omitted). Affirmatively approving a jury instruction extinguishes any error. *Id.* at 216, citing *United States v Griffin*, 84 F3d 912, 923-924 (CA 7, 1996).

When the trial court finished reading the jury instructions, the court asked whether the prosecution or defense had any objection to the instructions as delivered. Defense counsel replied, "No, thank you, your honor." Thus, despite defendant's characterization of this issue on appeal as forfeiture, under *Carter*, defense counsel's statement acted as an express approval of the jury instructions read by the trial court. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002). This approval extinguishes any error and precludes review.

Moreover, even were we to conclude that defendant merely forfeited the issue, defendant cannot show that the trial court plainly erred. With respect to the intent to deliver charge, the trial court instructed the jury that the prosecutor had to show that defendant “knowingly possessed a controlled substance” and that he “intended to deliver the substance to someone else” in order to prove defendant guilty of possession with intent to deliver. These intent instructions were proper. See *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998); CJI2d 12.3. The instructions given were correct; thus, we find that the trial court’s failure to provide a further instruction on specific intent was not reversible error. See *People v Maynor*, 470 Mich 289, 296; 683 NW2d 565 (2004); *People v Mitchell*, 61 Mich App 153, 163; 232 NW2d 340 (1975).

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey